IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1034 of 2006
In
SPECIAL CIVIL APPLICATION No. 12684 of 2006
With
CIVIL APPLICATION NO. 9788 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMJU AAMAD TURK - Appellant
Versus
ANJAR MUNICIPALITY & 11 - Respondents

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Appearance :
MR NV ANJARIA for Appellant : 1,
MR BY MANKAD for Respondent : 1,
MR BIREN A VAISHNAV for Respondents : 2 - 12.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 11/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

Since a short question is involved, by consensus, the appeal is taken up for final hearing today.

2. This Letters Patent Appeal is directed against an order passed on 31st July, 2006 in Special Civil Application No. 12684 of 2006, whereby the petition was not entertained by the learned Single Judge on the ground that the petition is preferred at a premature stage.

3. The petitioner-appellant approached the learned Single Judge preferring the petition, to challenge judgment and order dated 17th April, 2006 passed in Reference (IT) No.219 of 2003 by the Industrial Tribunal No.2, Rajkot read with judgment and award dated 9th August, 2004 passed by the Labour Court, Rajkot in Reference (LC) No.78 of 1998. The order impugned in the petition directed the employer to give regularisation to Respondents No.2 to 12 and give benefits of permanent employees. Against this, in the reference of the appellant, an order was

passed on 9th August, 2004 directing the respondent-authority to obtain permission from the Government for regular post and on getting such permission, to regularise the appellant after following the requisite procedure. The appellant, therefore, approached this Court with the petition praying for following reliefs:

> "(A) Your Lordshis will be pleased to issue a writ of or in the nature of certiorari or any other appropriate writ, order or direction, declaring the judgment and award dt. 17.4.2006 passed by the Industrial Tribunal No.2, Rajkot in Reference (IT) No.219 of 2003 (Annexure-B) to the petition) not sustainable in law, in breach of the principles settled in the judgment in 2004(2) GLH 692 (FB) and discriminatory to the rights of the petitioner to be considered for similar benefits on the basis of his length of service and in accordance with the judgment and award by the Labour Court dt. 9.8.2004 in Reference (LC) No.78 of 1998 (Annexure-A to the petition).
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> (B) Your Lordships will be pleased to issue a writ of or in the nature of certiorari or any other appropriate writ, order or direction, to quash and set aside the judgment and award dt. 17.4.2006 passed by the Industrial Tribunal No.2, Rajkot in Reference (IT) No.219 of 2003

(Annexure-B to the petition).

(C) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, requiring the respondent - Municipality to regularise the services of the petitioner and other similarly situated workmen including 13 workmen under the impugned award (at Annexure-B to the petition) in accordance with law and having regard to seniority and length of service of all the workmen in Class-IV and Class-III categories.

(D) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent-Municipality to observe scrupulously the criteria of seniority and length of service while conferring service benefits including that of permanency benefits or regularisation as may be sanctioned on the available posts.

(E) Pending hearing and final disposal of the present Special Civil Application, Your Lordships will be pleased to direct respondent-Municipality not to implement and operate the directions in the judgment and award dt. 17.4.2006 passed by the Industrial Tribunal No.2, Rajkot, in Reference (IT) No. 219 of 2003 (Annexure-B to the petition), and be further pleased to stay the operation and implementation

of the said judgment and award.

(F) And any other orders necessary in the interest of justice be passed."

4. The petition came to be rejected by the order impugned and hence, this appeal.

5. We have heard learned advocate Mr.Anjaria for the appellant, Mr.Mankad for respondent No.1, and Mr.Vaishnav for respondent Nos.2 to 12.

6. Learned advocate Mr.Anjaria submitted that the petition is turned down only on the ground that the petition is premature. He submitted that if the petitioner-appellant does not approach this Court at this stage and waits still respondent No.1 takes decision in respect of implementation of the Award (Annexure-B), a greater harm would be caused to the appellant and, therefore, it cannot be considered as a premature petition. He submitted that respondent Nos.2 to 12 are juniors to the appellant and, therefore, in light of the decision in case of **Amreli Municipality v. Gujarat Pradesh Municipal Employees**

Union, 2004(2) GLH page 692, the petition of the appellant ought not to have been dismissed.

7. Learned advocate Mr.Mankad as well as Mr.Vaishnav have opposed the appeal.

8. We have taken into consideration the decision in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union, 2004(2) GLH 692. We find that the learned Single Judge has disposed of the petition only on the ground of the petition being premature and has not considered the merits of the case. We notice that the direction issued by the Labour Court in Reference (IT) 219 of 2003 is to give regularisation straightway. The petition, in our view, can not be considered as premature. In our opinion, therefore, the matter calls for consideration on merits. We, therefore, set aside the order dated 31st July, 2006 passed by the learned Single Judge in Special Civil Application No. 12684 of 2006. The Special Civil Application is restored to its original number. The Special Civil Application be

placed before learned Single Judge for being heard and decided on merits. No orders as to costs.

Order on Civil Application No. 9788 of 2006

In light of disposal of Letters Patent Appeal, no order on merits in Civil Application. The protection that the appellant is enjoying, shall continue to operate till the Special Civil Application is placed before the learned Single Judge for hearing. Rule discharged. No costs.

[A.L.DAVE,J.]

[SHARAD D.DAVE,J.]

(patel)